

J. Shan

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No. : 09/481,572
Applicant : Jacqueline J. Shan
Filed : January 11, 2000
TC/A.U. : 1654
Examiner : Michael V. Meller

Confirmation No. 5800

Docket No. : 2968-160
Customer No. : 6449

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

In the Office Action mailed August 13, 2004, the Examiner restricted the claims into three groups. Applicants elect Group III, Claim 44, for prosecution on the merits. This election is made with traverse.

Applicant traverses the present restriction requirement and asserts that the claims of Groups I-III should be examined together. There are two criteria for a proper requirement for restriction between patentably distinct inventions: 1) The inventions must be independent or distinct as claimed; and 2) There must be a serious burden on the Examiner if restriction is required. See MPEP § 803.

Applicant asserts that even if the Examiner holds that Groups I-III are distinct, according to MPEP § 803, distinctness alone is not enough to require a restriction. There must also be a serious burden upon the examiner. In the absence of such a burden, the examiner must examine all of the claims. Applicant asserts that there would be no undue burden to examine all of the claims of

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Groups I-III because such claims teach a method of treating specific health disorders by administering *Hypericum perforatum*, especially by inhibition of T-type calcium channel current in cells. As such, the Examiner's search and examination for these claims would overlap, and it is urged that the burden of examining all of the claims of the present application is not a serious one.

Additionally, the Examiner has required Applicants to make a provisional election of a specific health disorder for examination. Applicants provisionally elect the health disorder, ischemic condition, for examination with traverse.

Insofar as the criteria for restriction practice relating to Markush-type claims is concerned, the criteria are set forth in MPEP § 803.02. See MPEP § 803. If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all claims on the merits, even though they are directed to independent and distinct inventions. In such a case, the Examiner will not require restriction. See MPEP § 803.02. Applicant asserts that there would be no undue burden to examine the related claimed health disorders together, all of which are treatable with *Hypericum perforatum*, especially by inhibition of T-type calcium channel current in cells. Also, the listed health disorders are sufficiently few in number. Thus, it is urged that the burden of examining all of the health disorders of the present application together is not a serious one.

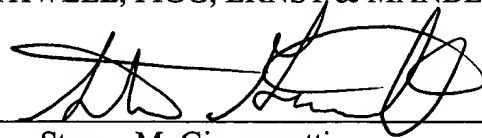
In view of the above arguments, it is requested that the election/restriction requirement imposed in the Office Action mailed August 13, 2004 be reconsidered and that all of the Groups and health disorders be examined together.

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Respectfully submitted,

ROTHWELL, FIGG, ERNST & MANBECK, p.c.

By

A handwritten signature in black ink, appearing to read 'Steven M. Giovannetti', is written over a horizontal line.

Steven M. Giovannetti
Registration No. 51,739
Attorney for Applicant
1425 K Street, N.W., Suite 800
Washington, D.C. 20005
phone: 202-783-6040
fax: 202-783-6031

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